IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.4117 OF 2005

Nimish Shah. ..Applicant.

V/s.

State of Maharashtra & Anr. ..Respondents.

Mr.Prakash Naik, for applicant.

Mrs.M.H.Mhatre, APP for Respondent-State.

Mr.A.M.Saraogi for respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 30, 2005.

P.C. :

1. This application is to recall the order dated October 5, 2004 passed in Criminal Application No.3734 of 2004 which was taken out by the respondent No.2. While passing the said order, I proceeded on the basis that respondent No.1 has been served, but has failed to appear at the time of hearing of the application.

2. It is contended that the respondent No.1, namely, applicant herein was never served and that no notice was given about the hearing of the said criminal application filed by the respondent No.2 herein. That position seems to be correct. For,

there is nothing on record to indicate that respondent No.1 was duly served. Indeed, the office note mentions that Shri Mahadik advocate for respondent No.1 but Vakalatnama was not filed. Suffice it to observe that none appeared for the respondent No.1 on October 5, 2004.

3. According to the applicant, unreported decision relied upon by the respondent No.2 herein is not applicable to the fact situation of the present case. It is not necessary to go into that question. For the present, I am inclined to accept the grievance of the applicant that the order dated October 5, 2004 has been passed without notice to him.

4. Accordingly, application is made absolute in terms of prayer clause (a). All contentions in Criminal application No.3734 of 2004 will be considered on merits.

5. It will be open to the parties to apply before the appropriate bench for listing of the Criminal Application No.3734 of 2004.